



JOHN ELIAS BALDACCI
GOVERNOR

STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0028

SETH H. BRADSTREET III
COMMISSIONER
HENRY S. JENNINGS.
DIRECTOR

BOARD OF PESTICIDES CONTROL

April 13, 2007

State of Maine Performance & Training Facility, Room 3 (Main Floor)
10 Mountain Avenue (off Route 201 going toward Skowhegan), Fairfield
(Exit 133 from I-95)

MINUTES

9:30 A.M.

☒ Present: Eckert, Jemison, Stevenson, Simonds, Humphreys.

1. Introductions of Board and Staff

☒ Board Members, Staff and Assistant Attorney General Randlett introduced themselves.

2. Minutes of the March 16, 2007 Board Meeting

Presentation By: Henry Jennings
Acting Director

Action Needed: Amend and/or approve

☒ Schlein pointed out a typo on a date in the minutes.

Jemison/Humphreys: Moved and seconded approval of the minutes.

In Favor: Unanimous

3. Bayer CropScience Request for a 24C Registration to Use a Lower Rate of Provado 1.6 Flowable Insecticide to Control Blueberry Maggot on Low Bush Blueberry

Bayer CropScience is requesting a Special Local Needs (24C) Registration to allow a lower rate of Provado (imidacloprid) on low bush blueberries to control blueberry maggot. The product is currently registered for use on blueberries with a recommended rate of 6 to 8 fluid ounces per acre. This request would allow for the use of 4 ounces per acre when low to moderate pest pressure exists.

Presentation By: Wesley Smith
Pesticides Registrar

Action Needed: Approve/Disapprove 24C Registration Request

- ☒ Smith pointed out that Provado is already registered for use on low bush blueberries. The current request is simply to allow for a reduced application rate. A 24C registration isn't a legal requirement in this instance, it simply provides a label that growers can refer to for accurate instructions.

David Yarborough, Blueberry Specialist for the University of Maine, informed the Board that Provado is an alternative to more toxic insecticides commonly used to control fruit flies and thrips. Board members were supportive of providing alternative insecticides, especially to the organophosphates.

Simonds/Jemison: Moved and seconded approval of the 24C registration request.

In Favor: Unanimous

4. City of Augusta Request for Variance for a Vegetation Management Program Along Sidewalks and Median Strips

The Board's drift regulations allow applicators to seek a variance from any standards they feel are unreasonable for their type of operation. The City of Augusta would like to treat weeds growing in cracks between the sidewalks and the streets and also cracks adjacent to median strips. They are seeking a variance so they do not have to record all sensitive areas within 500 feet of the target areas. Instead, they propose using a small spray pattern, leaving a 50-foot buffer to surface water, and publishing a notice in the Kennebec Journal.

Presentation By: Henry Jennings
Acting Director

Action Needed: Approve/Deny the variance request

- ☒ Jennings introduced the subject stating that this was the City of Augusta's first application for a variance, thereby necessitating review and approval by the Board. Augusta plans to apply glyphosate to weeds occupying cracks between the sidewalk and the road surface and also between the road and the median strip. Board members were concerned about runoff into storm drains and the presence of humans in the vicinity at the time of the applications. Leo St. Peter, the licensed master applicator for the City of Augusta, stated most of the spraying will be done at night to minimize conflicts with traffic and pedestrians. Low pressure equipment will be utilized to minimize off-target deposits.

Stevenson/Jemison: Moved and seconded approval of the variance.

In Favor: Unanimous

5. Consideration of Three Applications for Registration for Bt Field Corn Products

Pioneer Hi-Bred International, Inc., Dow AgroSciences and Monsanto have submitted applications to register Bt Field Corn products in the State of Maine. Pioneer and Dow have submitted applications for three separate products, while Monsanto is only applying to register one product. At its December 15, 2006 meeting, the Board discussed Plant Incorporated Protectants and what information it would want to review in considering requests to register such products. The Board determined that it would want to review information relative to three different issues: (1) the need/benefit for the products, (2) the risks of insect resistance development, and (3) the risks of gene drift. At its March 16, 2007 meeting, the Board discussed the process for reviewing these issues. Jemison agreed to assemble a small committee for that purpose. The Board will begin the process of reviewing the three applications and invite comments from the applicants and the public.

Presentation By: Lebelle Hicks, Staff Toxicologist
Representative(s) from the Applicants

Action Needed: Determination of Process for Considering the Application

- ☒ Eckert informed the audience that discussion of this topic did not constitute a formal public hearing, but was merely a regular meeting agenda topic for which the Board would entertain public input. She alerted the audience that sign-up sheets were present in the back of the room, and that persons interested in addressing the Board should sign up on the appropriate sheet. Each participant would be allowed five minutes. Eckert pointed out that the Board did not plan to make a decision on the registration at this meeting, but hoped to map out a process for reviewing the science prior to making a final decision.

Lebelle Hicks, staff toxicologist, briefly reviewed the seven pending registration applications submitted by the three different companies. Hicks also gave a brief overview of the history of plant-incorporated protectants (PIP) in the United States and historical registration requests in Maine.

John Jemison reported he had formed a technical committee, as agreed at the March 16, 2007 meeting, to review gene flow, insect resistance and need/benefit. Jemison will chair the committee and Hicks will represent the staff. Hicks stated that she will maintain a list of anyone who wished to receive emails of the committee work.

Eckert then asked if anyone representing the applicants wanted to address the Board. Kimberly Morin, Regional Director of State Government Affairs for Monsanto, introduced herself and stated she was present to answer questions and supply information to the Board and Board subcommittees tasked with reviewing the requests. Mary Beth Hart and Elizabeth Owens from Pioneer Hi-Bred International also introduced themselves and stated they were also present to answer questions and provide information.

During the public comment period of the meeting, Glen Larrabee, Doug Johnson, Lauchlin Titus, Jim Thomas, James Helton and Thomas Cote all spoke in favor of

registering the Bt corn products. Russell Libby and Spencer Aitel both spoke in opposition. Logan Perkins offered comments neither for nor against.

Supporters of Bt corn argued that the technology reduces pesticide use, requires fewer trips through the field, addresses key pest problems and that the top-yielding seed varieties contain the Bt corn traits.

Opponents expressed concern about development of resistance, movement of genes to other plants and crops and questioned the economics of using Bt seed.

Logan Perkins asked that the Board consider liability issues associated with gene movement.

6. Adoption of Amendments to Chapters 40 and 41

At its January 19, 2007 meeting, Board members reviewed two suggested rule changes relating to Chapters 40 and 41. First, they discussed the idea of exempting certain pond dyes from the licensing requirement to purchase and apply the products. Second, members discussed a proposal to reclassify trichlorfon from limited to restricted use so long as applicators adhere to certain risk-reduction measures. The Board voted to direct the staff to initiate rulemaking on both proposals. A Notice of Agency Rulemaking Proposal was published on February 7, 2007, with a deadline for comments of March 9, 2007. No public hearing was scheduled, but three written comments were received. The Board reviewed the comments at its March 16, 2007 meeting and voted to direct the staff to prepare adoption documents for the April 13, 2007 meeting.

Presentation By: Henry Jennings
Acting Director

Action Needed: Adoption of Amended Rules, Basis Statement and Response to Comments

- ☒ Jennings reminded members that they needed to adopt a basis statement, a response to comments and the final language of the amended rules, and that each chapter should be considered separately. He pointed out that two slightly revised basis statements were in their meeting folders. The revised statement better articulated policy basis for adopting the rule amendments.

Simonds/Humphreys: Moved and seconded adoption of the basis statement, the response to comments and the amended rule for Chapter 40.

In Favor: Unanimous

Jemison/Stevenson: Moved and seconded adoption of the basis statement, the response to comments and the amended rule for Chapter 41.

In Favor: Unanimous

7. Consideration of Staff Negotiated Consent Agreement with the Barren View Golf Course of Jonesboro

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involved an employee of the club applying pesticides at the course during 2006. Golf courses are considered a place open to use by the public, which may only be sprayed by licensed commercial applicators. At the time of the applications, no person from the course was licensed as a commercial applicator. These actions constitute a violation of the Board's statute requiring that a licensed applicator be present whenever commercial applications are conducted.

Presentation By: Raymond Connors
Acting Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff

- ☒ Connors reviewed the circumstances of the case, pointing out that a Board inspector had conducted a routine inspection and determined that the applicator for the golf course was applying pesticides, but had failed to renew his applicator license. The staff treats such cases as low gravity, administrative violations at the low end of the penalty scale.

Humphrey/Stevenson: Moved and seconded approval of the consent agreement.

In Favor: Unanimous

8. Discussion about Current Posting Requirements for Commercial Applicators and Whether the Board Should Be Considering Expanding the Requirements to Cover Additional Circumstances

At their March 16, 2007 Board Meeting, members reviewed a letter from Mary Dolan of Old Orchard Beach. In her letter, Dolan raised concerns about pesticide applications that are made in public areas such as parks, but are not covered by the Board's posting requirements. Examples include herbicide applications along walkways and parking lots, and mosquito and tick control applications. After discussing Dolan's letter, the Board directed the staff to place the matter on the next Board meeting agenda to determine whether minor rulemaking should be initiated.

Presentation By: Henry Jennings
Acting Director

Action Needed: Determine whether to pursue minor rulemaking

- ☒ Board members considered tabling this agenda item due to meeting time constraints. Assistant Attorney General Randlett advised the Board to treat the letter as a petition and respond to the request within 60 days.

Jemison/Stevenson: Moved and seconded to direct the staff to write a letter to Mary Dolan indicating there was general support for her concerns and that the issue would be added to their list of minor rulemaking changes and be considered at a future date.

In favor: Unanimous

9. Continued Discussion Concerning Potential Development of Buffer Zones to Protect Surface Water

At the July 21, 2006 Board Meeting, members reviewed their prioritization balloting for discretionary tasks discussed at their 2006 planning session in June. Development of buffer zones to protect water quality ranked as the Board's number four priority. The Board reviewed potential language and concepts at the January, February and March Board Meetings, and directed the staff to develop a summary of which types of surface waters would be affected under the language discussed to date. The Board will review that summary and further discuss the buffer concepts.

- ☒ Jemison/Stevenson: Moved and seconded to table the agenda item.

In Favor: Unanimous

10. Other Old or New Business

a. Variance Permit Issued to RWC, Inc., of Westfield, MA

- ☒ Jennings alerted Board members that the staff had renewed the RWC variance based on the Board policy calling for the staff to renew variances that were in place the previous year, providing that no violations or incidents were encountered.

b. Legislative Update H. Jennings

- ☒ LD 861 is the bill conceived by the Board and submitted by the Department of Agriculture. It would require that persons applying pesticides in "Food Handling Establishments" to be licensed as commercial pesticide applicators. Agricultural interests had voiced concerns about whether the bill would affect apple and potato storages. Since this isn't the intent of the bill, Jennings is working with the Department and the Office of Policy and Legal Analysis to explore language that would clearly exempt agricultural facilities.
- ☒ LD 1698 is the bill supported by the National and New England Pest Management Associations. The bill would exempt FIFRA Section 25(b) products from Chapter 26, and exempt crack and crevice treatments from the notification requirements.

Finally, the bill seeks to rework the notification procedures so that notices are posted when the technician arrives to make treatments.

Jennings stated that five Board members opposed the bill, one supported it and one had not taken a position. Members discussed whether there may be a compromise worth pursuing. There was no consensus on a compromise position, and members indicated they felt their work should stand on its own merit. The staff will testify in opposition to this bill.

- ☒ LD 1798 is a bill sponsored by Representative Blanchard of Old Town that would place a fifteen-cent surcharge on consumer pesticides to fund pesticide education. Funds would be split between Cooperative Extension and the Board. Jennings alerted members to a letter sent to the Board by Andrew Hackman of the Consumer Specialty Products Association, urging the Board to oppose the bill. Members were generally supportive of the intent of bill, but did not take a position on how funds should be raised. The Board directed the staff to testify in support of the bill.

c. Aerial Committee Updates

- ☒ Hicks informed the Board that the last meeting of the technical committee had been cancelled and that the second meeting of the stakeholders committee is scheduled for April 23. Hicks also noted that Jennifer Anderson of Environment Maine is leaving the organization and has suggested that Mathew Davis take her place on the committee.

Jemison/Simonds: Moved that Mathew Davis be appointed to the Stakeholders Committee to replace Jennifer Anderson.

In Favor: Unanimous

d. Other

11. Schedule and Location of Future Meetings

May 11, 2007, and June 22, 2007, are the tentative dates for the next Board meetings. The conference room at Maple Hill Farm has been reserved for a planning session on October 26, 2007.

Adjustments and/or Additional Dates?

- ☒ Board members added tentative dates of July 20 and August 29.

12. Adjourn

- ☒ Simonds/Stevenson: Moved and seconded adjournment of meeting.

In Favor: Unanimous